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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
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Installment Payments for )  
PCS Licenses )

Amendment of Part 1 of the )  
Commission's Rules -- )  
Competitive Bidding Proceeding )

WT Docket No. 97-82

**COMMENTS OF COMCAST CORPORATION ON  
BROADBAND PCS C AND F BLOCK INSTALLMENT PAYMENT ISSUES**

Comcast Corporation ("Comcast") hereby submits its comments in response to the Commission's Public Notice of June 2, 1997, seeking comment on a number of proposals to revise the installment payment plans of broadband PCS C and F block licensees.<sup>1/</sup> Comcast owns and operates cellular systems primarily serving cellular geographic service areas in Pennsylvania, New Jersey and Delaware. Comcast, through a separate subsidiary, also holds a fifteen percent ownership interest in Sprint PCS, a national provider of Personal Communications Services through licenses covering three-quarters of the U.S. population. Sprint PCS acquired PCS licenses in the A and B block auctions, in which it was the highest bidder, paying over two billion dollars for licenses for 29 Major Trading Areas. Comcast, through yet a third subsidiary, was the high bidder with respect to twelve BTA licenses recently auctioned in the D, E and F block auctions, and seventeen BTA licenses recently auctioned for the Wireless Communications

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Service. Comcast hereby opposes any changes to the C and F block installment plans which would significantly alter the economic terms and conditions currently set forth in the Commission's rules, which the C and F block licensees accepted in submitting winning bids for their licenses.

## **INTRODUCTION AND SUMMARY**

Congressional authorization for the use of competitive bidding for the award of radio licenses, and the Commission's implementation of this authorization, embodied a fundamental decision to rely on market-based mechanisms for the disposition of valuable rights to use publicly-owned radio spectrum to persons having the financial wherewithal to fulfill their auction obligations and construct their systems. The Commission's auction mechanisms have been carefully crafted to maximize the operation of market forces with respect to any single auction or licensed territory, consistent with the requirements for construction and operation of those markets awarded. To date, the Commission has rigorously enforced its auction rules and procedures and has consistently disqualified and even penalized parties who have failed to meet the financial obligations they assumed in the competitive bidding process.

The Public Notice seeks comments on a number of proposals which, reduced to their essentials, would relieve C and F Block bidders of substantial financial obligations which these bidders voluntarily assumed by the placement of their bids. Of these proposals, two are so egregious as to fundamentally call into question the integrity of the auction process. One set of

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<sup>1/</sup> Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," WT Docket 97-82, DA 97-679 (rel. June 2, 1997) ("Public Notice").

proposals would substantially reduce the price which C and F block bidders agreed to pay for their spectrum under the guise of various types of “restructuring” of the C and F block payment plans. The second set of proposals would permit C and F block “entrepreneur” licensees to essentially defer all principal payments until a time which happens to coincide with the first moment these licensees are permitted to dispose of their licenses to parties who do not qualify as entrepreneurs under the Commission’s special eligibility rules for these frequency blocks.

The main rationale offered for these changes is that circumstances in financial markets have changed significantly since the time the winning bids were made.<sup>2/</sup> Merely to state this rationale, however, highlights how fundamentally misguided these proposals are when viewed in the proper context of the Commission’s auction regime. If the Commission is truly committed to relying upon market-based mechanisms for the award of PCS and other licenses, it must accept the consequences of marketplace developments, positive and negative. The discipline of free markets dictates that if a party makes a bad economic decision, its financial performance suffers relative to its competition, and if the decision is bad enough, the enterprise will fail. By demanding relief due to recent and relatively incremental marketplace developments, the licensees essentially state that their bids represented more than just speculation as to the profitability of playing the “spectrum game,” but also gambles that financial market conditions would continue unchanged following the placement of their bids. The bidders must bear the consequences of their ill-advised decisions.

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<sup>2/</sup> The suggestion that the woes of the C and F block licensees stems from “changes in financial markets” is itself somewhat suspect. Interest rates have not increased dramatically, and the stock market continues to achieve record highs while unemployment remains low. The number of existing and projected wireless carriers has not changed. The simple fact is that C block licensees

In crafting its auction regime, the Commission anticipated that bidders might miscalculate or make bids that they were ultimately unable to support. The Commission thus developed processes to address these situations on an individual basis, including grace periods, rules to permit economically distressed entrepreneurs to transfer their licenses to better financed entrepreneurs, and, as a last resort, reauctioning of spectrum. These devices are all consistent with a market-based approach, and also constituted the basis upon which all bidders, winners and losers, elected to participate in the auctions.

If, instead of adhering to the market-based auction ground rules adopted in advance of an auction, the Commission were to retroactively grant wholesale economic relief to a group of distressed auction bidders, it will send a clear signal to bidders, financial markets, and investors, that auctions are not true market-based events at all, but that the Commission is back to business as usual: awarding licenses, and permitting licensees to retain these licenses, based on regulatory and legal gamesmanship. Such an approach would call into question the basic ground rules for future auctions, and generate fundamental uncertainty among bidders and investors. Any such uncertainty, in turn, will once again encourage speculative bidding by parties who lack the wherewithal to pay for their licenses and build out their systems. Finally, such an approach is fundamentally unfair to those who stopped bidding in the C block auction when prices reached economically irrational levels, and all those who have suffered the consequences of the Commission's heretofore strict application of its auction payment requirements. Comcast, and all other bidders who have expended, and will in the future expend substantial sums of money in

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inexplicably overbid for their spectrum - even when comparing the net present value of their bids, taking into consideration all credits and discounts afforded, to the bids in the A and B blocks.

Commission auctions, are entitled to rely on the Commission's consistent statements that bidders will be held to their bids.

**I.     SIGNIFICANT MODIFICATIONS OF EXISTING INSTALLMENT PAYMENT PLANS WILL UNDERMINE THE AUCTION PROCESS AND ENCOURAGE SPECULATION**

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Congress's decision to authorize auctions, and the FCC's implementation of its auction authorization in a variety of contexts, were designed in substantial part to create a true market for radio spectrum. Competitive bidding permits those parties who most highly value spectrum to obtain that spectrum by submitting the highest monetary bids. Significant alterations of the payment terms after an auction is closed, on the other hand, tampers with the basic market mechanism the Commission has created. If installment payment plans are modified to significantly reduce or defer payments associated with a winning bid, parties who submitted economically unsupportable bids would be rewarded through *ex post facto* action permitting them to retain their licenses, while parties who correctly valued the spectrum and thus withdrew from bidding would be penalized. The Commission has, to date, properly and universally rejected the excuse of "changed circumstances" as justification for failing to meet a party's auction obligations. Changing this approach would create substantial uncertainty about the integrity and structure of the auction process and encourage speculation, and should be rejected.

**A.     The Fundamental Goal of Commission Auction Policy is to Utilize Market-Based Mechanisms for the Disposition of Spectrum**

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There can be little doubt that one of the fundamental intentions underlying the Congressional and FCC auction regime is to create a true market for the distribution of rights to use a valuable public resource, the public airwaves. Chairman Hundt, with justifiable pride, recently described this "revolution" in spectrum management: "[F]or the first time ever the FCC

truly follows a market-based approach to the allocation and use of spectrum.”<sup>3/</sup> In passing the legislation authorizing auctions, Congress also made clear that auctions are intended to be market-based mechanisms. The House findings accompanying the auction legislation concluded that

a carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves....

139 Cong. Rec. at H3088 (May 27, 1993). Similarly, the Senate findings contrasted “current spectrum management and spectrum assignment procedures,” which resulted in “an inefficient distribution of spectrum and unjustified windfall to speculators,” with competitive bidding, which was expected to “reduce the costs in time and money – and increase the efficiency – of the spectrum assignment process for certain radio services, discourage speculative applications, encourage the efficient use of spectrum by licensees, and fairly compensate United States taxpayers for use of the scarce public natural resource...” 139 Cong. Rec. at S7995 (June 24, 1993).

The acceptance of competitive bids for radio licenses, standing alone, does not create a true market mechanism for the distribution of spectrum. The Commission recognized early on that strict enforcement of parties’ commitment to actually pay off their bids under the terms and conditions specified by the Commission was equally important to ensure that the auction process did not become a sham. In its first major order implementing its auction authority, the Commission observed,

it is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or default and

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<sup>3/</sup> Remarks of Chairman Reed E. Hundt to Citizens For A Sound Economy, Washington, D.C., “Spectrum Policy and Auctions: What’s Right, What’s Left” (June 18, 1997).

on a balance due. We therefore are adopting penalties to be assessed in the event of default or disqualification. These penalties will provide strong incentives for potential bidders to make certain of their qualifications and financial capabilities before the auction so as to avoid delays in the deployment of new services to the public that would result from litigation, disqualification and re-auction.

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order, 9 FCC Rcd. 2348, 2382 (1994) (“Second Report and Order”).

Most of the proposals before the Commission involve significant changes in the economic ground rules of C and F block auctions after the game is over, apparently in order to avoid the strictures which otherwise would govern auction behavior. Such changes strike at the heart of the free market for the distribution of spectrum the Commission has labored long and hard to create.

**B. Significant Retroactive Changes in the Terms and Conditions of Payment for C and F Block Licenses Fundamentally Tamper with, and Undermine, Market-Based Auction Mechanisms**

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The fundamental concept of a market is that individuals make economic decisions which are intended to maximize economic returns based on the individual's assessment of the full range of relevant information. In the auction context, the Commission defines the economic terms and conditions under which bidders are obligated to pay for their spectrum. In the context of the A and B block auctions, these ground rules were quite simple: winning bidders were required to pay in cash for their spectrum following the grant of their licenses. In the case of the C and F block auctions, the payment rules were more complicated but nonetheless clearly defined. Winning bidders falling into various categories understood that they would be required to pay for their spectrum according to specifically defined installment payment plans, and would also be required to operate within FCC regulations specifying what were acceptable business structures for eligible entities. These basic ground rules provided the critical economic context in which all of the bidders, and all those who elected not to bid, operated. There can be little doubt that both the

losers and nonparticipants in the auction took these terms and conditions into account in their bidding strategies. Similarly, parties submitting winning bids both agreed to accept these terms and conditions, and expressly represented to the Commission that they were fully capable of meeting the Commission's financial requirements in applying for their licenses after the auctions closed.

The C block bidders freely made basic economic decisions about the amounts of their bids, while many other C block bidders dropped out as prices quickly approached economically irrational levels. The C block licensees have now come to the Commission seeking relief, claiming they are unable to finance their bids. In short, their economic decisions were speculative and wrong, and the licensees now seek to have the Commission save them from the consequences of these wrong decisions. In free markets, parties who make wrong decisions suffer the consequences, and suffer these consequences whether they had good reasons to be wrong or not.

That many C block auction winners were not only wrong but economically irrational could not be clearer, and this is not simply hindsight. The main benchmark offered for proposed reductions in the price C Block licensees will be required to pay for their licenses are the prices paid by winning bidders in the A and B block auctions.<sup>4/</sup> While it is almost too obvious to state, the winning bids in the A and B block auctions were available to C block bidders prior to the C block auction, and should have informed their economic decisionmaking.

Viewed in this proper context, the C block licensees' protestations of changed circumstances do not provide a basis upon which to grant relief. Some of the alleged changed



circumstances are not changes at all, but could have been, and in fact were, foreseen by parties participating in the C block auction. For example, one group of C block licensees cites as a change the fact that “all new entrants must construct their licenses quickly in order to maintain their competitiveness.” which is “the direct result of the increasingly competitive marketplace,”<sup>5/</sup> C block bidders certainly knew that cellular licensees had been in operation for years, and equally well knew that the A and B block licensees would receive their licenses well in advance of the winners of the C block auctions. One might expect that this would cause C block bidders to bid less than A and B block bidders, but that is not what happened.

Nor do alleged changes in market conditions affecting the ability of C block licensees to finance their businesses justify the extraordinary relief requested. First, market conditions have not changed significantly in the past year. Second, while it should go without saying, a fundamental characteristic of markets is that they change. By citing unfavorable changes in financial markets as the basis for relief, the winning bidders now experiencing difficulties essentially admit that they gambled that market conditions at the time of the auction would continue unchanged, a gamble which clearly was unjustified. In any case, if the Commission decides to tamper with the results of the auction and the basic economic terms and conditions of the auction winners based on subsequent market developments, it would wholly undermine its own market-based mechanisms and the integrity of the auctions. Markets require clear and

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<sup>4/</sup> Thus, MCI, which advocates deferral of principal payments for entrepreneurial bidders, justifies its proposal on the basis that it “brings the C block into a closer proximity to the other broadband MTA licensees (A and B blocks) on a net present value basis, making them a much more attractive play for investors.” Letter of Leonard S. Sawicki to William F. Caton at 2 (May 1, 1997) (“Sawicki Letter”), attached to Public Notice at 86073, 86074.

<sup>5/</sup> Letter of Thomas Gutierrez, Esq. et al. to Michele C. Farquhar, Esq. at 2 (March 13, 1997) (“Gutierrez Letter”), attached to Public Notice at 86067, 86068.

predictable ground rules, so that parties can make decisions and rely upon the fact that the rules will not change in midstream. Commissioner Susan Ness has made this point tellingly in another context, and the point is even more telling here:

[T]aken together, the changes proposed herein, the PCS service revisions adopted today, and the other service and auction rule changes we have adopted over the past several months constitute a substantial modification of our rules in midstream – after some but not all of the licenses have been auctioned and before the licensees had a chance to implement the business plans pursuant to which they bid for their licenses.

Flexibility and new ideas are welcome, but constancy is also a virtue. Regulatory uncertainty has the potential to undermine our services and our auctions by generating confusion on the part of service providers and the financial community.

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We are approaching the point where marketplace behavior may begin to reflect the assumptions that our rules will continue to evolve every few months and that therefore there is no need to comply with those that have already been promulgated. That would be grossly unfair to those who diligently follow the rules as written.

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services

Licensees, Notice of Proposed Rulemaking, WT Docket 96-148, 11 FCC Rcd 10187, 10223-24 (1996) (Separate Statement of Commissioner Susan Ness).

The other justifications offered by C block licensees for substantial modification of their payment terms must also be categorically rejected. At least one licensee has implied that the Commission should modify payment terms so that winning bidders can retain their licenses in order to avoid the delays associated with either transferring the licenses or reauctioning the spectrum. As recently as last week, the Commission has rejected such suggestions, and for sound reasons:

We do not accept NetTel's argument that dismissal of its application for license B-492 contravenes Commission policy to rapidly process C block licenses in an effort

to rapidly deploy new services. While the Commission generally favors such rapid deployment, this goal must be balanced against the integrity of the auction process. If the auction process is compromised, delays in service are more likely to occur. Thus, the integrity of the auction process depends on both rapid service deployment and the timely meeting of payment obligations.<sup>6/</sup>

**C. Significantly Revising the Economic Terms and Conditions Associated with C and F Block Licenses Will Encourage Speculation**

Among the devices which Congress authorized in order to encourage participation of small businesses and entrepreneurs in the auction process was the use of installment payments. The Commission recognized early on, however, that it was important to limit the availability of installment payments in order to avoid abuses. Thus, in the Second Report and Order, the Commission recognized that use of installment payments for “large, valuable block[s] of spectrum” could “encourag[e] under-capitalized firms to receive licenses for facilities which they clearly lack the resources adequately to finance.” Second Report and Order, 9 FCC Rcd at 2390. Similarly, in its Fifth Memorandum Opinion and Order on competitive bidding, the Commission observed that

Reducing or eliminating interest payments could result in very high bids, which could reduce competition and promote defaults among entrepreneurs. Such an approach could also encourage speculation instead of legitimate applicants who can attract capital.<sup>7/</sup>

The simple fact is that far too many of the C block winners were speculating, with less of an intention to build and operate than to cash out when permitted to assign their licenses. In this proceeding, the C block licensees propose to substantially revise the payment terms for their

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<sup>6/</sup> National Telecom PCS, Inc., Memorandum Opinion and Order, FCC No. 97-192, ¶ 16 (rel. June 19, 1997).

<sup>7/</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order, PP Docket No. 93-253, 10 FCC Rcd. 403, 460 (1994) (“Fifth Memorandum Opinion and Order”).

licenses even before they have been required to make their first major installment payment.

Grant of such relief on a broad basis would send a clear signal to participants in future auctions that if they should bid too much and experience financial distress, the Commission may very well grant them a second chance to essentially rebid for their licenses. Similarly, suggestions that it is appropriate to grant C and F block licensees relief which brings their payment obligations in line with the current market value of their licenses is also a sure means of encouraging speculation. In essence, the Commission would be creating a safety net for bidders who bid too much for their spectrum by signaling a willingness to revalue the spectrum in subsequent negotiations if the value should prove to be less than a party's winning bid.

**D. Significant Changes in the Payment Terms for C and F Block Licenses Would be Unfair to Losing Bidders, Non-Participants and Those Parties Whose Payment Obligations Have Been Strictly Enforced, and Would Involve Illegal Differential Treatment**

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The Commission has sent clear signals throughout the auction implementation process that parties will be expected to honor their winning bids or suffer disqualification, and in appropriate circumstances, significant penalties.<sup>8/</sup> The Commission has consistently adhered to this position, and has imposed substantial penalties upon parties which improperly withdrew bids or defaulted upon their winning bids.<sup>9/</sup> In so doing, the Commission has consistently rejected the arguments of

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<sup>8/</sup> See, e.g., Second Report and Order, 9 FCC Rcd. at 2382.

<sup>9/</sup> See, e.g., BDPCS, Inc., Order, DA 97-1066 (Wireless Telecommunications Bur. rel. May 21, 1997) (default payment in the amount of \$67,695,653.23); PCS 2000, L.P., Request for Waiver of Section 24.704(a)(1) of the Commission's Rules, Order, DA 96-2156 (Wireless Telecommunications Bur. rel. Dec. 20, 1996) (bid withdrawal payment in the amount of \$3,273,374); C.H. PCS, Inc., DA 96-1825 (Wireless Telecommunications Bur. rel. Nov. 4, 1996) (default payment in the amount of \$5,031,232.50); National Telecom PCS, Inc., Order, 11 FCC Rcd 14605 (Wireless Telecommunications Bur. 1996) (default and bid withdrawal payments totaling \$347,478.50); see also Public Notice, "Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules," DA 96-481 (Apr. 4, 1996).

individual licensees that changed circumstances justified the failure to meet payment requirements.<sup>10/</sup> Comcast respectfully submits that the mere fact that the Commission is now faced with requests from multiple bidders facing financial distress does not distinguish the issues before the Commission from those presented by individual applicants, and that taking a different approach here would be arbitrary and capricious.

Similarly, losing bidders and non-participants in the C block relied upon the terms and conditions defined in advance of the auction in determining not to bid higher prices in the auction or to participate. Any significant change in the payment terms and other conditions applicable to C block licenses would be fundamentally unfair to these persons, who might very well have been willing to participate or bid higher amounts had they known that the Commission would later be willing to relax the ownership conditions and payment terms the Commission specified in advance. In fact, many unsuccessful bidders bid precisely the amounts that the less prudent winners are now seeking to have substituted for their own winning bids. The FCC cannot possibly justify, in any legally defensible way, permitting winning bidders to retain their licenses as against losing bidders who bid precisely the same amount. In light of the Commission's many statements that auction bidders would be strictly held to their bids, rewarding the irresponsible and punishing the prudent turns the Commission's auction policy on its head.

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<sup>10/</sup> See, e.g., Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., DA 96-811, 6 (Wireless Telecommunications Bureau, rel. May 20, 1996) ("We therefore are not persuaded that BDPCS's last-minute difficulties in arranging its financing warrant deviation from our general rules. As we have previously stated '[t]he Commission...cannot be responsible for the private business arrangements that an applicant has made to fund a successful bid.'").

**E. The Commission Should Continue to Adhere to Its Market-Based Processes for Addressing Individual Cases of Financial Distress**

In creating its auction regime, the Commission was appropriately sensitive to the need to accommodate ever changing commercial realities which its winning bidders would face. It carefully calibrated its system of default penalties, so that they would be “rationally related to the harm caused, yet set high enough to deter unwanted conduct.” Second Report and Order, 11 FCC Rcd at 2382. The Commission has also progressively developed market-based mechanisms for dealing with individual financial distress. Thus, Section 1.2110 of the Commission’s Rules builds in an automatic grace period of 90 days following the due date of a payment before a payment is considered to be delinquent. 47 C.F.R. 1.2110(e)(4)(i). The Rules further provide for a three to six month grace period based upon careful considerations of the individual facts presented, including “whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for the default, whether the licensee has met construction build-out requirements, the licensee’s financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy.” 47 C.F.R. 1.2110(e)(4)(ii). In short, the Commission has provided that under appropriate factual circumstances, entrepreneurs and small businesses may obtain up to a nine-month grace period in which to work out their specific financial difficulties.

In adopting its rules for the D, E and F block auctions, the Commission further refined its “market oriented solutions to problems of financial distress.”<sup>11/</sup> In that decision, the Commission relaxed its holding requirements to permit transfers to other qualified entrepreneurs and small businesses within the first three years after receipt of a license. The Commission

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<sup>11/</sup> Amendment of Parts 20 and 24 of the Commission’s Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, FCC No. 96-278, ¶ 85 (rel. June 24, 1996).

observed that “[m]arket-oriented solutions to problems of financial distress will often be preferable to the FCC reclaiming and reauctioning licenses, and we believe this amendment will promote such a result by allowing transfers to entrepreneurs who may be better prepared than the original licensee to construct and provide service.”<sup>12/</sup>

Comcast respectfully submits that these carefully crafted procedures should be given the opportunity to work in the context of the C block auctions before consideration is given to any significant changes in the payment terms applicable to C and F block licenses. In this regard, Comcast notes that most of the C block licensees who have asked for relief have sought quite modest relief. For example, should the Commission determine that relief beyond what is currently set forth in the rules is warranted by extraordinary circumstances, Comcast would not oppose the grant of the relief requested by a number of substantial C block bidders that installment payments be made on an annual, rather than quarterly basis.<sup>13/</sup>

Significant changes, however, are entirely unwarranted at this time. As the Commission reiterated in its recent Notice of Proposed Rulemaking in its Competitive Bidding Proceeding,

we believe that our auction rules balance in a reasonable, commercial fashion the government’s interest in protecting the public’s rights to receive full payment for the spectrum bid upon, while granting qualifying entities the ability to pay for licenses through installment payments more generous in terms than any type of loan otherwise available in the marketplace. Our rules and policies are designed to promote private market solutions to capital problems (i.e., licensees and lenders working together toward a satisfactory resolution), and therefore provide adequate mechanisms for entities to obtain sufficient debt financing under general market conditions.<sup>14/</sup>

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<sup>12/</sup> Id.

<sup>13/</sup> See Gutierrez Letter at 1.

<sup>14/</sup> Amendment of Part I of the Commission’s Rules - Competitive Bidding Proceeding, Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 97-82, FCC No. 97-60, ¶ 11 (rel. Feb. 28, 1997).

The Commission should not tamper with this balanced policy simply to accommodate the most speculative, and least responsible, C block bidders.

**II. THE DEFERRAL OF INSTALLMENT PAYMENTS BEYOND YEAR FIVE, AND FURTHER RELAXATION OF REQUIREMENTS FOR EQUITY PARTICIPATION BY QUALIFIED PARTIES, WOULD BE INCONSISTENT WITH THE COMMISSION'S OBJECTIVE OF ENSURING GENUINE PARTICIPATION IN THE PCS BUSINESS BY SMALL BUSINESSES AND QUALIFIED ENTREPRENEURS**

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Another central objective underlying the FCC's reservation of the C block for entrepreneurs and small businesses was the maximization of participation by diverse groups in newly authorized services. The Commission has struck a balance between ensuring that entrepreneurs and small businesses are able to genuinely participate in the PCS business by exercising de facto and de jure control over their bidding entities, while permitting large, established businesses to provide financing to these entities. One important mechanism for ensuring genuine participation by qualified small businesses and entrepreneurs is the Commission's five-year holding period for licenses obtained by these entities through the C and F block auctions. The Commission also ensures genuine participation by carefully scrutinizing business arrangements which affect the de facto and de jure control of otherwise qualified entities. Thus, the Commission has rejected business arrangements which would result in qualified entities being forced to sell their businesses even after expiration of the initial holding period. For example, the Commission has stated that call options held by non-attributable investors confer an impermissible degree of control upon "non-controlling" investors because they could be "used to force a designated entity to sell its ownership interests."<sup>15/</sup> Similarly, the Commission has expressed strong skepticism with respect to arrangements between designated entities and

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<sup>15/</sup> Fifth Memorandum Opinion and Order, 10 FCC Rcd at 456.



strategic investors involving terms that “cumulatively are designed financially to force the designated entity into a sale (or major refinancing). . . .” Id. at 456.

In short, the Commission has attempted to discourage financial arrangements which would result in the wholesale sell-off of PCS licenses by entrepreneurs and small businesses after the expiration of the holding period. Proposals to defer all principal payments until the sixth year of a license,<sup>16/</sup> however, are likely to produce exactly this result. Given the financial condition of the distressed C block licensees, prudent lenders or investors are unlikely to provide long-term financing beyond the initial requirements of the licensees through year five. If principal payments are deferred until year six, entrepreneurs would, at that point, be faced with substantially increased payments, and little alternative but to sell their licenses or default on these increased payments. Comcast submits it is far preferable to ensure, on an individual, case by case basis, that PCS licenses are held by entities on a sound financial footing, rather than deferring the day of reckoning for distressed licensees until the precise moment when they are permitted to sell to non-qualified entities. Even if the currently distressed C-Block licensees are on a sounder economic footing by the end of year five, the incentive to sell out rather than finance and manage a business with substantial license payments will be very high. A Commission decision to award such favorable terms will also further encourage speculation.

Similarly, under the guise of improving the ability of distressed C block licensees to attract capital, a variety of proposals have been made which would further reduce the economic stake of qualified parties in their PCS businesses. These proposals seek, inter alia, to modify the

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<sup>16/</sup> See Sawicki Letter at 2; see also Letter of James H. Barker to William F. Caton at 3 (May 9, 1997) (“Barker Letter”), attached to the Public Notice at 86079, 86081.

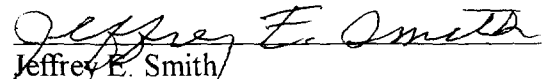
ownership and attribution rules for C block licensees<sup>17/</sup> and to increase the amount of foreign ownership in C block licensees.<sup>18/</sup> Again, the Commission has carefully crafted its minimum equity holding requirements to ensure that qualified parties retain a real economic stake in their ventures, rather than acting as fronts for non-qualified parties. The Commission should not let circumstances of the most distressed parties disrupt this delicate balance.

### CONCLUSION

For the foregoing reasons, Comcast respectfully requests the Commission adhere to its established practices for dealing with distressed C and F block bidders and reject proposals to significantly modify the economic terms and conditions associated with these licenses.

Respectfully submitted,

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Dated: June 23, 1997

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<sup>17/</sup> See Sawicki Letter at 3; Barker Letter at 3; Informal Proposal by General Wireless Services, Inc., attached to the Public Notice at 86111 and 86119 ("GWI Proposal").

<sup>18/</sup> See Barker Letter at 4; GWI Proposal, Public Notice at 86111 and 86119.